**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929**

**OP.No. 36885 of 2002(N)**
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**PETITIONER:**
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**K.S.ABDUL SALAM, KOLLIYIL HOUSE,**
**EDAVANAKKAD, VYPPIN, KOCHI-2.**

**BY ADV. SRI.G.SUKUMARA MENON.**

**RESPONDENTS:**
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1. **TAHSILDAR, KANAYANNUR TALUK,**
   **ERNAKULAM.**

2. **REVENUE DIVISIONAL OFFICER,**
   **FORT KOCHI.**

3. **DISTRICT COLLECTOR, ERNAKULAM.**

**BY GOVERNMENT PLEADER SRI. MATHEW GEORGE VADAKKEL.**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER ON C.M.P. NO. 62325/2002 IN O.P. NO. 36885/2002**

**DISMISSED**

**02/08/2007.** **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE AGREEMENT DTD. 22/02/93 EXECUTED BY A.K. SIDHIK WITH THE PETITIONER.**

**EXT.P.2: COPY OF THE BUILDING PERMIT NO. MOP3-259/93 ISSUED BY THE CORPORATION OF COCHIN TO A.K. SIDHIK.**

**EXT.P.3: COPY OF THE OCCUPANCY CERTIFICATE NO. MOP4-259/93 DTD. 23/08/96 ISSUED BY THE CORPORATION OF COCHIN TO A.K. SIDHIK.**

**EXT.P.4: COPY OF THE STATEMENT SHOWING THE PARTICULARS OF THE FLAT OWNERS WHO HOLD UNDIVIDED SHARE IN THE LAND COMPRISED IN SY. NO. 707/1 OF ELAMKULAM VILLAGE.**

**EXT.P.5: COPY OF THE STATEMENT DTD. 12/08/1998 FROM R. RANGANATH OWNER OF FLAT NO.1 IN IDEAL APARTMENTS.**

**EXT.P.6: COPY OF THE STATEMENT DTD. 12/08/1998 FROM BALAKRISHNAN OWNER OF FLAT NO.2 IN IDEAL APARTMENTS.**

**EXT.P.7: COPY OF THE THE STATEMENT DTD. 12/08/1998 FROM M.T. JOSE OWNER OF FLAT NO. 3 IN IDEAL APARTMENTS.**

**EXT.P.8: COPY OF THE STATEMENT DTD. 12/08/1998 FROM N.T. GEORGE OWNER OF FLAT NO.4 IN IDEAL APARTMENTS.**

**EXT.P.9: COPY OF THE STATEMENT DTD. 12/08/1998 FROM K.K. ABDUL AZIZ OWNER OF FLAT NO.5 IN IDEAL APARTMENTS.**

**EXT.P.10: COPY OF THE STATEMENT DTD. 12/08/1998 FROM K.K. ABDUL RASHEED OWNER OF FLAT NO. 6 IN IDEAL APARTMENTS.**

**EXT.P.11: COPY OF THE STATEMENT DTD. 12/08/1998 FROM R. KRISHNAKUMAR OWNER OF FLAT NO. 7 IN IDEAL APARTMENTS.**

**EXT.P.12: COPY OF THE STATEMENT DTD. 12/08/1998 FROM SUNIL VARGHESE, OWNER OF FLAT NO. 8 IN IDEAL APARTMENTS.**

**O.P. NO. 36885/2002:**

**EXT.P.13: COPY OF THE STATEMENT DTD. 12/08/1998 FROM K.S. MARIYUMMA, OWNER OF FLAT NO. 10 IN IDEAL APARTMENTS.**

**EXT.P.14: COPY OF THE STATEMENT DTD. 12/08/1998 FROM A.K. SIDIK ON BEHALF OF SAMIYA A SIDIK AND SAMI A. SIDIK, OWNERS OF FLAT NO. 11 & 14 IN IDEAL APARTMENTS.**

**EXT.P.15: COPY OF THE ASSESSMENT ORDER NO. B1-122876/97 DTD. 26/03/98 ISSUED BY THE R.1. TO THE PETITIONER.**

**EXT.P.16: COPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT OF KERALA IN O.P. NO. 12432 DTD. 03/07/1998.**

**EXT.P.17: COPY OF THE TAX PAID RECEIPT NO. 7 OF BOOK NO. 251 DTD. 06/07/98 ISSUED BY THE VILLAGE OFFICER, ELAMKULAM VILLAGE.**

**EXT.P.18: COPY OF THE ORDER NO. K. DIS. 3577/98/G. DTD. 15/12/98 OF THE R.2.**

**EXT.P.19: COPY OF THE REVISION PETITION DTD. 01/02/1999 OF THE PETITIONER BEFORE THE R.3.**

**EXT.P.20: COPY OF THE TAX PAID RECEIPT NO. 15 OF BOOK NO. 744 DTD. 30/01/1999 OF THE VILLAGE OFFICER, ELAMKULAM VILLAGE.**

**EXT.P.21: COPY OF THE NOTICE NO. B.10-7276/99 DTD. 17/09/2001 FROM THE R.3. ISSUED TO THE PETITIONER.**

**EXT.P.22: COPY OF THE DEMAND NOTICE DTD. 29/02/2002 FROM THE R.1. ISSUED TO THE PETITIONER.**

**EXT.P.23: COPY OF THE JUDGMENT DTD. 25/10/2002 OF THIS HONOURABLE COURT IN O.P. NO. 31226/2002.**

**EXT.P.24: COPY OF THE ORDER NO. K. DIS. 7276/99/B10 DTD. 24/10/2001 OF THE R.3. ISSUED TO THE PETITIONER THROUGH THE VILLAGE OFFICER ELAMKULAM.**

**RESPONDENT'S EXHIBITS:** **NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**prv.**

**THOTTATHIL B.RADHAKRISHNAN, J.**

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O.P.No.36885 OF 2002

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Dated this the 2nd day of August, 2007

**JUDGMENT**

Going by the appellate order passed under the Kerala Building Tax Act, 1975 on the statutory appeal filed by the petitioner, he is a builder who had entered into an agreement with a land owner to develop a piece of land. Different persons had obtained flats in the structure that ultimately came up on that piece of land. Even in the appeal filed before the Revenue Divisional Officer, the petitioner produced certain documents in the form of statements of the owners disclosing that amounts were paid during the currency of the construction by the proposed owners. It is the case of the petitioner that there were agreements executed between the proposed owners and the petitioner builder. A bunch of materials were produced in the appeal along with an affidavit dated 14.8.1998, with a petition to receive those documents.

2. I have perused the files and found that those documents are statements issued by the occupiers in which each of them has specifically stated the details of the different cheques issued by each of them towards payment. The appellate authority, however, issued the impugned order without taking into consideration any of these materials. The petitioner made a specific ground in his revision before the District Collector regarding the non consideration of the documents. The availability of the documents is a matter of record. The District Collector also did not conclude that the documents were not produced. It was the bounden duty of the revisional authority to consider the issue. The appellate authority could not have also ignored the documents. While it may be a matter for the appellate authority to conclude on the evidentiary value and whether an order is to be made in favour of the petitioner as sought for by him in his appeal, it is not open to the appellate authority to eschew the materials on record and pass an order without referring to the available materials. For considering the

question in issue, if the appellate authority deems it necessary to call for further documents or other materials, including the books of accounts, it is open to the appellate authority to insist on the petitioner to produce such materials by giving him an opportunity to do so. This ought to have been the course to be adopted in this case, particularly when the petitioner had produced the same documents along with the aforesaid affidavit, which documents are not wholly irrelevant to decide the matter.

3. In the result, the impugned Exts.P18 and P22 are quashed and the matter is remitted for re-consideration of the appeal by the RDO. Having regard to the deposits made by the petitioner, neither the RDO nor any other revisional authority shall insist on any remittance during the course of any further proceedings. Following this order, the RDO will afford the petitioner an opportunity of being heard and consider such materials as are on record and such other materials, if any, that may be produced by the petitioner, including the books of accounts. Let a final

decision as directed above be taken within on outer limit of four months from the date of receipt of a copy of this judgment.

The writ petition is disposed of with the above directions.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN,**
**Judge**

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.36885 OF 2002

JUDGMENT

2ND AUGUST, 2007.

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